

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18240
[Redacted] Petitioner.)	
)	DECISION
)	
)	

On February 23, 2004, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (Corporation), proposing income tax, penalty, and interest for the years 2000, 2001, and 2002 in the total amount of \$0.

On April 22, 2004, a timely protest and petition for redetermination was filed by the Corporation's representative (representative). An informal conference has not been requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

[Redacted]s a Subchapter S Corporation (S-Corporation) that is in the real estate business. The Corporation was incorporated in 1997 and elected S-Corporation status in 1997. The Corporation has two shareholders, [Redacted], husband and wife, with 50% ownership each.

The Corporation is registered with the Idaho Secretary of State and has had a withholding permit with the Idaho State Tax Commission since January 1, 1997.

The Corporation has an active Internet website, [Redacted].com, with [Redacted] listed and is currently offering [Redacted].

The Corporation has continuously had a [Redacted]since 1993.

The Corporation was a non-filer for tax years 1997, 1998, 1999, 2000, 2001, and 2002. The initial return request was mailed to the Corporation on December 31, 2001. After contact from the

TDB, the Corporation filed S-Corporation income tax returns on November 22, 2002, for tax years 1997, 1998, and 1999.

The Corporation's \$20 extension payments were received for tax years 2000, 2001, and 2002 and are currently on hold waiting for actual returns to be filed.

The NOD for tax years 2000, 2001, and 2002 was issued on February 23, 2004. The amounts reported on the NOD for net income before adjustments were based on gross sales reported on the Corporation's 1999 federal form 1120S. There was no adjustment allowed for cost of goods sold since this adjustment was not reported on the Corporation's 1999 Form 1120S. The NOD was issued to flow through the S-Corporation income to the shareholders who also have not filed their Idaho individual income tax returns since 1996. The extension payments were reflected in the NOD and that is why there was a zero balance due.

The Corporation's protest letter was sent by the representative on April 22, 2004, in which he stated:

This letter serves as a written protest for redetermination of assessments for the calendar years 2000, 2001, and 2002. The proposed assessments by the State are incorrect since they do not reflect actual income or any operating expenses. Taxpayers are compiling the data necessary to file complete tax returns, which will report actual income and expenses.

The taxpayers are anxious to come into compliance with all tax filings and will strive to complete the information in the next 30 to 45 days. Thank you for your assistance in this matter.

On April 23, 2004, the Tax Business Specialist (specialist) sent a written letter to the Corporation acknowledging that a timely petition for redetermination had been received. The specialist requested that the Corporation provide its missing returns by June 7, 2004 and that the Corporation provide a Power of Attorney for its representative.

Numerous promises were made to the Idaho State Tax Commission that the 2000, 2001, and 2002 S-Corporation income tax returns would be filed.

On October 15, 2004, the Tax Policy Specialist (policy specialist) sent a letter to the representative to inform him of the Corporation's alternatives for redetermining a protested NOD. A request that the Corporation provide a Power of Attorney for the Corporation's representative was also made.

On November 15, 2004, the Idaho State Tax Commission received the representative's letter and his client's power of attorney. His letter stated:

. . . we will provide the material required to finalize this matter. If a meeting is required to answer questions, please schedule a time we can meet with a designee of the Commission.

On February 9, 2005, the policy specialist sent the representative a letter in which he stated:

The Commission does not require a meeting in this matter. You have not provided any material as of the date of this letter. It is unclear from your letter whether you wish to have an informal conference with the Commission in this matter. If you require an informal conference with the Commission, please provide, in writing, the dates that you are not available for an informal conference by February 19, 2005. If, by that date, the Commission has not received any material or a written request for an informal conference from you, a decision will be issued on the information currently in the file.

The representative did not respond to this letter.

The requirement for the Corporation to file its income tax returns can be found in Idaho Code § 63-3030 which stated in pertinent part:

Persons required to make returns of income. -- (a) Returns with respect to taxes measured by income in this chapter shall be made by the following: . . .

(4) Every corporation reporting as an S corporation pursuant to Internal Revenue Code sections 1361 through 1379 to the federal

government, which is transacting business in this state, or is authorized to transact business in this state. A corporation which is reporting as an S corporation to the federal government must report to the state of Idaho as an S corporation for and during the same period or periods in which its election to report as such a corporation is effective for federal tax purposes and must identify itself as an S corporation on its income tax return filed with this state;

Thus, as a matter of law, the Idaho Income Tax Act required that the Corporation file income tax returns for the years in question.

Idaho Code § 63-3032(a) states that the income tax return made on the basis of the calendar year shall be filed in the office of the Idaho state tax commission on or before the 15th day of April following the close of the calendar year.

Neither the Corporation or its representative have provided the Commission with a contrary result to the determination of the Corporation's income [Redacted] on gross sales reported on the Corporation's 1999 federal form 1120S. Therefore, the Commission must uphold the deficiency.

WHEREFORE, the Notice of Deficiency Determination dated February 23, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

There is no additional liability due from the Corporation. Since the shareholders, [Redacted], are residents of Idaho, the income from the S-Corporation will flow through to their individual income tax returns.

An explanation of the Corporation's right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]

[Redacted]
